

Doctrine Assures Public Rights in Waters



Wisconsin lakes and rivers are public resources, owned in common by all Wisconsin citizens under the state's Public Trust Doctrine. Based on the state constitution, this doctrine has been further defined by case law and statute. It declares that all navigable waters are “common highways and forever free,” and held in trust by the Department of Natural Resources.

Wisconsin citizens have pursued legal and legislative action to clarify or change how this body of law is interpreted and implemented. As a result, the public interest, once primarily interpreted to protect public rights to transportation on navigable waters, has been broadened to include protected public rights to water quality and quantity, recreational activities, and scenic beauty.¹ **All Wisconsin citizens have the right to boat, fish, hunt, ice skate, and swim on navigable waters, as well as enjoy the natural scenic beauty of navigable waters, and enjoy the quality and quantity of water that supports those uses.**²

Wisconsin law recognizes that owners of lands bordering lakes and rivers – “riparian” owners – hold rights in the water next to their property. These riparian rights include using the shoreline, the reasonable use of the water, and a right to build piers for navigation. However, the Wisconsin State Supreme Court has ruled that when conflicts occur between the rights of riparian owners and public rights, the public’s rights are primary and the riparian owner’s secondary.¹

Wisconsin’s Public Trust Doctrine requires the state to intervene to protect public rights in the commercial or recreational use of navigable waters. The DNR, as the state agent charged with this responsibility, can do so through permitting requirements for water projects, through court action to stop nuisances in navigable waters, and through statutes authorizing local zoning ordinances that limit development along navigable waterways. These statutes have created Wisconsin’s Shoreland Management Program, a partnership between the state, which sets minimum standards for shoreland development, and the counties, which are required to adopt ordinances that reflect the state standards or more protective ones. The counties enforce the standards.¹

The court has ruled that DNR staff, when they review projects that could impact Wisconsin lakes and rivers, must consider the cumulative impacts of individual projects in their decisions. *“A little fill here and there may seem to be nothing to become excited about. But on fill, though comparatively inconsequential, may lead to another, and another, and before long a great body may be eaten away until it may no longer exist. Our navigable waters are a precious natural heritage, once gone, they disappear forever,”* wrote the Wisconsin State Supreme Court justices in their opinion resolving Hixon v. PSC.²

Sources

¹Quick, John. 1994. *The Public Trust Doctrine in Wisconsin*. Wisconsin Environmental Law Journal, Vol. 1, No. 1.

²“Champions of the Public Trust, A History of Water Use in Wisconsin” study guide. 1995. Wisconsin Department of Natural Resources Bureau of Water Regulation and Zoning.